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No. 98-1231

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

THE BANKRUPTCY ESTATE OF ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,

Petitioner,

v.

GOYA FOODS, INC., JOSEPH A. UNANUE, FRANK UNANUE, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Should the New Jersey courts' determination that Petitioner's father was domiciled in New Jersey for state-law inheritance purposes when he died in 1976 be overridden by 48 U.S.C. § 733a, a statute enacted in 1927 to govern citizenship of Puerto Rico, where the statute has never been construed as Petitioner seeks to interpret it, and has never been relied upon in *any* reported federal decision since its adoption 72 years ago?

2. Did the Full Faith and Credit Clause forbid the New Jersey courts from applying New Jersey law in adjudicating rights to a New Jersey trust, created by a New Jersey domiciliary, containing stock located in New Jersey that conferred ownership of a corporation headquartered in New Jersey?

3. Was Petitioner denied "notice and an opportunity to be heard" in connection with a summary judgment motion where the issue raised by the motion had been present in the case since the complaint was filed six years earlier, and the court accorded Petitioner the opportunity to brief, submit evidence on, and orally argue the summary judgment motion before deciding it?

PARTIES TO THE PROCEEDING

The parties to the proceeding below were Charles Unanue (also known as Ulpiano Unanue-Casal), Petitioner herein,* and the following parties who are named as Respondents in this Court: Goya Foods, Inc. ("Goya"), Joseph A. Unanue, and Frank J. Unanue, together with Carol Ann Unanue-Freeborg, C. Jeffrey Unanue, Robert I. Unanue, Mary Ellen (Unanue) Yorio, C. Randall Unanue, Joseph F. Unanue,** Thomas Unanue, Mary Carmen (Unanue) Norris, Mary Ann (Unanue) Quiñones, Mary Louise (Unanue) Guggenheim, Theresa Elizabeth Devir, Francisco R. Unanue, Mary Isabel (Unanue) McVicar, Carlos Unanue, Anne Marie Unanue, Peter Unanue, Andrew Unanue, and Jorge Unanue (collectively, the "Beneficiary Respondents"). This Brief in Opposition is filed on behalf of all Respondents except C. Jeffrey Unanue.

STATEMENT PURSUANT TO RULE 29.6

Pursuant to Rule 29.6 of the Rules of this Court, Respondents state that the corporate Respondent, Goya, does not have any parent corporations, and that Cardet Wholesale Foods, Inc. is Goya's only nonwholly-owned subsidiary.

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* Although the Petition in this case has purportedly been filed by "the Bankruptcy Estate of Ulpiano Unanue-Casal, a/k/a Charles Unanue," no such entity has existed since Petitioner's bankruptcy case was dismissed on September 12, 1995. (*See infra*, text at 2, 9-10)

** Joseph F. Unanue died on November 28, 1998.

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Herbert F. Goodrich, *Handbook on the Conflict of Laws* 26-27 (1st ed. 1927) 15

K.K. Kennan, *A Treatise on Residence and Domicile* 890-918 (1934) 15

Willis L.M. Reese & Robert S. Green, *That Elusive Word, "Residence"*, 6 Vand. L. Rev. 561 (1953) 15

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Order of the Superior Court of New Jersey, Law Division, Bergen County, Probate Part, dated December 7, 1997 Confirming Its Jurisdiction over All Disputes Concerning Prudencio Unanue's Estate and Trust . 1a

Order of the United States Court of Appeals for the First Circuit dated November 16, 1993 Denying Petitioner's Motion for a Stay of New Jersey Proceedings Pending Appeal 3a

Opinion and Order of the United States Bankruptcy Court for the District of Puerto Rico dated September 12, 1995 Dismissing Petitioner's Chapter 7 Bankruptcy Case 6a

Respondents respectfully submit this Brief in Opposition to the Petition for a Writ of Certiorari to the Supreme Court of the State of New Jersey.

OPINIONS BELOW

The opinions and orders below are cited in the Petition (Pet. 1-2) and reprinted in the Appendix to the Petition. An additional relevant order of the Superior Court of the State of New Jersey, Bergen County, Law Division, Probate Part, dated December 7, 1987, is unreported and is reprinted in the Appendix hereto. (*See infra* at 1a-2a)

STATEMENT OF JURISDICTION

The Petition in this case fails to properly invoke the jurisdiction of this Court. Petitioner cites 28 U.S.C. § 1254(1) as the basis for jurisdiction in this case (Pet. 3), but that statute confers certiorari jurisdiction upon this Court to review only decisions of the United States Courts of Appeals, and is inapplicable to this case in which Petitioner seeks review of a judgment and underlying orders of the New Jersey state courts. If this Court has jurisdiction, it is pursuant to 28 U.S.C. § 1257(a), which is not invoked as a basis for jurisdiction in the Petition. In any case, as discussed below in the Reasons for Denying the Writ, many of Petitioner's arguments relate principally to state-law issues and state-court factual and procedural determinations, which this Court does not sit to review.

PRELIMINARY STATEMENT

This Petition represents the culmination of a bitter intra-family dispute that has resulted in prolonged litigation between

Petitioner, Charles Unanue,[1] and numerous other Unanue family members over the past 30 years. The case principally involves Petitioner's claim that he is entitled to inherit certain assets from his father, who died in 1976. After eleven years of proceedings beginning in 1987, the New Jersey courts have decisively rejected Petitioner's state-law inheritance claim, as well as his related attempt to set aside two contracts that Petitioner and several family-owned companies had executed in 1972 and 1974 to settle prior litigation. Petitioner now seeks to transform this state-law dispute into a case raising federal issues, but in fact this case involves no colorable issues of federal law at all, much less unsettled and important issues that could warrant this Court's review. Accordingly, the writ should be denied.[2]

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1. The Petition identifies "the Bankruptcy Estate of Ulpiano Unanue-Casal, a/k/a Charles Unanue" as the Petitioner. However, as Charles Unanue advised a lower court in 1995, "[o]n September 12, 1995, the Bankruptcy Court for the District of Puerto Rico *dismissed* Charles Unanue's bankruptcy petition without prejudice. As a result, all property of the bankruptcy estate, including the [bankruptcy] Trustee's Appeal, was *revested in Charles Unanue* [individually] pursuant to 11 U.S.C. § 349(b)(3)." (Certification of Jan Alan Brody, Esq., dated Dec. 21, 1995, at 2; emphasis added) Thus, the bankruptcy estate *ceased to exist* three and one-half years ago and cannot even nominally be a party to litigation, and Respondents are at a loss to understand why it has now been resurrected as a "petitioner" in this Court. If the Petition is cognizable at all under these circumstances — which Respondents submit it is not — it must be regarded as having been filed by Charles Unanue, who will accordingly be referred to as Petitioner.

2. In addition to this Petition filed by his long-time counsel, Petitioner *pro se* has filed a second petition (No. 98-1250) to review the same judgment below. As was noted by the Appellate Division of the New Jersey Superior Court, Petitioner's "filing of separate appeals by the same party from the same final judgment is an obvious, untenable, and intolerable violation of the overriding policy of judicial

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COUNTERSTATEMENT OF THE CASE[3]

Petitioner's father, Prudencio Unanue ("Prudencio"), was the founder of Goya Foods, Inc. ("Goya"). Beginning in 1929, Prudencio lived and was domiciled in the State of New Jersey. (*See* Pet. 4a-7a, 14a-127a, 222a) As the courts below found, Prudencio continuously maintained his New Jersey domicile until his death, at age 89, in 1976. (*Id.*)

The Goya business was established in New York City during the 1930's, and moved to New Jersey in 1974. (*See* Pet. 39a-40a) Prudencio owned a substantial block of Goya stock, which in 1970 he placed in an *inter vivos* trust (the "Trust"), governed by New Jersey law, for the ultimate benefit of his 18 grandchildren. (*See* Pet. 5a, 100a)

Between 1969 and 1974, Petitioner was engaged in prior litigation with Goya, its affiliates, and the members of his

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(Cont'd)
administration that litigation be conducted expeditiously, economically, and efficiently." (Pet. 10a-11a) Petitioner's pattern of misconduct such as the filing of these duplicative submissions, thereby burdening the Court and evading Rule 33.1(g)(1) governing the length of petitions for certiorari, in and of itself warrants the denial of both petitions.

3. The Statement of the Case contained in the Petition (Pet. 5-13) contains vitriolic allegations of wrongdoing, by Respondents and others, extending as far back as 1969. Virtually none of these allegations are supported by citation to the record below, and many are directly contrary to the detailed findings of fact reached by the state courts. No effort is made in this Brief in Opposition to respond to all of Petitioner's factual allegations, which are almost entirely irrelevant to the question of whether certiorari should be granted. The fact that Respondents have confined their Brief in Opposition to relevant matters should in no event be deemed an admission that any of Petitioner's other allegations are accurate.

family. The parties resolved that litigation in two settlement contracts, known as the "1972 Agreement" and the "1974 Amendment," under which Petitioner relinquished his ownership in Goya and its affiliates in return for more than $4.3 million in cash. In the 1974 Amendment, Petitioner agreed, *inter alia*, that he would never assert that he was entitled to an ownership interest in Goya, or seek an inheritance from his father's assets. The parties (including Petitioner) expressly agreed that both the 1972 Agreement and 1974 Amendment would be "construed and governed in accordance with the laws of the State of New York." (*See* Pet. 170a)

Upon Prudencio's death in 1976, his will was probated without objection in New Jersey, and the Trust continued to be administered there. Prudencio's estate plan was unchallenged for 11 years after his death, but in 1987, Petitioner suddenly reappeared and demanded "his share" of the Goya stock contained in the Trust, in violation of the 1974 Amendment, purportedly on the basis that Prudencio had supposedly been domiciled in Puerto Rico rather than New Jersey and was subject to the "forced heirship" and community-property laws of that jurisdiction.

To resolve the uncertainty created by Petitioner's belated demand for an inheritance, on August 13, 1987, Respondents commenced a declaratory judgment action against Petitioner in the Superior Court of New Jersey, where Petitioner's estate and the Trust had been administered over the preceding decade. The complaint sought, *inter alia*, a determination that Petitioner had no right to any assets contained in Prudencio's estate or the Trust, both because Prudencio had been domiciled in New Jersey and because, in any event, the 1974 Amendment barred Petitioner from asserting any inheritance claim. On December 7, 1987, the New Jersey court entered an order confirming its jurisdiction over the controversy, determining that it had and

would exercise jurisdiction to adjudicate all claims by anyone (including Petitioner) to assets of either Prudencio's estate or the Trust, including any disputes concerning the applicable law governing such claims. (Order of Dec. 7, 1987, at 2; *infra* at 1a-2a)

The New Jersey court decided that it would first address the question of Prudencio's domicile, which could be dispositive of the remaining issues. Despite innumerable attempts by Petitioner to obstruct or delay the proceedings,[4] discovery on the domicile issue (including 35 depositions) was concluded and the case readied for trial. Between July 1989 and September 1990, the New Jersey Superior Court conducted a 171-day trial on Prudencio's domicile, involving a wide-ranging inquiry in which the parties explored virtually every facet of Prudencio's life and family history.

As the domicile trial in New Jersey was concluding, Petitioner filed a voluntary bankruptcy case dated August 29, 1990 in the United States Bankruptcy Court in Puerto Rico. This filing automatically stayed the New Jersey action under 11 U.S.C. § 362, but the Bankruptcy Court modified the stay to permit adjudication of the domicile issue. Thereupon, on

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4. Some of Petitioner's more egregious tactics prior to the New Jersey trial are described in the opinions in *Unanue-Casal v. Unanue-Casal*, 898 F.2d 839 (1st Cir. 1990) (Breyer, C.J.) (affirming reprimand of Petitioner under Fed. R. Civ. P. 11 for frivolous attempt to "remove" the two-year-old case from New Jersey state court to federal court in Puerto Rico on the morning trial was set to begin, because "there [was] good reason to believe that Charles filed the removal petitions for 'an improper purpose,' namely, to harass, or to delay the start of the New Jersey trial"); *Unanue-Casal v. Unanue-Casal*, 132 F.R.D. 146 (D.N.J. 1989) (imposing monetary sanction of $16,000 against Petitioner for similar removal attempt in New Jersey, and cataloguing some of Petitioner's other misconduct to date), *aff'd*, 914 F.2d 244 (3d Cir. 1990).

December 4, 1991, the New Jersey Superior Court ruled, in a 147-page opinion, that Prudencio was domiciled in New Jersey at all relevant times, up through and including his date of death in 1976. (Pet. 14a-127a, 222a) In determining that Prudencio was domiciled in New Jersey, the trial court's opinion observed that Prudencio had become a New Jersey domiciliary when he initially moved from New York to New Jersey in 1929, and that Prudencio had always retained that domicile for the remaining 47 years of his life. In particular, the court found that while Prudencio had undisputedly spent the final five years of his life in Puerto Rico before he died in 1976, his extended stay in that location resulted from a series of debilitating medical problems that began while Prudencio happened to be in Puerto Rico for his annual winter visit, at the age of 84, and continued for the remainder of his life. Under well-settled law, the court held, this involuntary stay in Puerto Rico did not represent a change of Prudencio's domicile. (Pet. 61a)[5]

After the domicile opinion was issued, Respondents sought and ultimately obtained further relief from the automatic

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5. Although the Petition fails even to *mention* that Prudencio was gravely ill throughout the final years of his life, the trial court's opinion contains extensive discussion of Prudencio's medical problems during these years. (*See* Pet. 51a-61a, 104a-109a) During this period, Prudencio was in his late 80's, generally confined to a small apartment, receiving around-the-clock nursing care, compelled to wear a urethral catheter, and suffering from uremia, prostate cancer, heart disease, arthritis, at least one severe stroke that impacted his ability to walk and speak, and a series of ischemic attacks following the stroke. As the trial court found, "Prudencio's confinement to Puerto Rico by reason of ill health from January 1971 until his death on March 17, 1976, at 90 years of age, *was involuntary, was never intended to be permanent, and cannot be considered a change of domicile* to Puerto Rico from New Jersey." (Pet. 61a; emphasis added) Given these findings, the Petition's reference to "Prudencio's unquestioned and uninterrupted freely chosen residence in Puerto Rico" (Pet. 10) is grossly inaccurate.

bankruptcy stay so that the New Jersey proceedings could be completed and Petitioner's claims finally resolved. *See Unanue-Casal v. Unanue-Casal* (*In re Unanue-Casal*), 159 B.R. 90 (D.P.R. 1993), *aff'd mem.*, 23 F.3d 365 (table), 1994 WL 179925 (1st Cir. 1994). With that relief granted, on October 15, 1993, Respondents moved in the New Jersey action for summary judgment on the remaining issues. In particular, Respondents moved, *inter alia*, for "a declaratory judgment that Charles Unanue has no rights to receive any assets from . . . the *inter vivos* trust created on November 16, 1970." (Notice of Motion dated Oct. 15, 1993, at ¶ 2) The New Jersey court authorized and invited Petitioner individually, his bankruptcy trustee (who had become a nominal party to the action), and/or the New Jersey attorney who had represented both of them for many years (who is also Petitioner's counsel of record herein), to appear before it, jointly or separately, and to present whatever evidence and arguments they wished in opposition to Respondents' motion.[6]

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6. Petitioner observes that the bankruptcy trustee did not appear during this phase of the proceedings and implies that this resulted in some unfairness to him. (*See* Pet. 11) In truth, it was Petitioner whose own attempt to obstruct the proceedings blocked the trustee from hiring counsel. The "bankruptcy estate" had previously been represented in New Jersey (and was later represented in the appellate courts) by the same attorney who represented Petitioner individually (and is Petitioner's counsel of record herein). However, Petitioner instructed that attorney not to appear in response to Respondents' summary judgment motion, and instead appeared *pro se*. During this period, as the First Circuit Court of Appeals held in denying a motion by Petitioner to stay the New Jersey action, "the record strongly suggest[ed] that the movant has been manipulating the bankruptcy process to avoid determination of the merits of the underlying dispute." (*See infra* at 4a) The First Circuit further noted:

> Movant's contention that his interests will not be represented in the New Jersey action because the bankruptcy trustee is unwilling or unable to appear is without merit.

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On November 19, 1993, after all parties (including Petitioner) had briefed and orally argued all aspects of Respondents' motion for summary judgment, the New Jersey trial court granted that motion in all respects and held, *inter alia*, that Petitioner had no right to inherit any assets from either Prudencio's estate or the Trust. (Pet. 166a-180a) In reaching this conclusion, the court noted that Petitioner's inheritance claims were based solely on legal concepts from Puerto Rico (such as "forced heirship" and "conjugal partnerships") that were simply inapplicable given the prior determination that Prudencio was domiciled in New Jersey and not in Puerto Rico. (*See id.*) The court also upheld the validity of the 1974 Amendment, which Petitioner also challenged under Puerto Rico law, holding that there was no reason to disregard the parties' (including Petitioner's) express choice of New York law to govern that agreement. (Pet. 170a-172a)

Subsequently, on March 28, 1994, the New Jersey court granted a motion by Respondents for an award of their reasonable attorneys' fees and expenses incurred in their litigation with Petitioner, as authorized by an express provision of the 1974 settlement contract. (Pet. 181a-194a, 214a-221a) After a hearing before a special master regarding the amount of fees to be awarded, the New Jersey court entered a final money judgment, dated February 23, 1995, payable by Charles Unanue and his bankruptcy estate. (Pet. 200a-213a)

(Cont'd)

> The New Jersey court has indicated that it would permit movant to appear on his own behalf. As the district court wrote, and as the record amply supports, movant "has demonstrated no problems hiring numerous lawyers and law firms for all of his suits."

(*Id.* at n.1)

Petitioner appealed the trial court determinations to the Appellate Division of the New Jersey Superior Court. While that appeal was pending, on September 12, 1995, the Bankruptcy Court in Puerto Rico granted a motion by the bankruptcy trustee to dismiss Petitioner's bankruptcy case "for cause" under 11 U.S.C. § 707(a), without granting him a discharge. (*See infra* at 6a-10a) In dismissing Petitioner's bankruptcy case, the Bankruptcy Court noted, *inter alia*, the absence of creditors other than those involved in "the family dispute" pending in New Jersey. (*Id.* at 9a & n.3) The Bankruptcy Court also took note of a series of prior findings by the United States District Court, in its "relief from stay" and related decisions, that Petitioner's bankruptcy filing was a "sham," filed "in bad faith" as "a ruse designed to frustrate the legitimate rights of his adversaries." (*Id.* at 9a-10a & n.4)[7] Upon this dismissal of the bankruptcy case (which was not appealed), the nominal "bankruptcy estate of Charles Unanue" ceased to exist, and all assets and liabilities of the estate reverted to debtor Charles Unanue pursuant to 11 U.S.C. § 349(b). Petitioner's counsel acknowledged, at that time, that upon such dismissal "all property of the bankruptcy estate . . . was revested

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7. *See Unanue-Casal v. Unanue-Casal*, 159 B.R. 90, 99-102 (D.P.R. 1993), *aff'd mem.*, 23 F.3d 395 (table), 1994 WL 179925 (1st Cir. 1994); *Goya Foods, Inc. v. Unanue-Casal*, 164 B.R. 216, 217 (D.P.R. 1993), *aff'd mem.*, 32 F.3d 561 (table), 1994 WL 408070 (1st Cir. 1994), *cert. denied*, 513 U.S. 1149 (1995). The Bankruptcy Court's and District Court's conclusion that Petitioner's "no asset" bankruptcy case was fraudulent proved correct: In 1997, after a ten-day bench trial, the United States District Court for the District of Puerto Rico found that in order to conceal assets from creditors, over a period of many years Petitioner had fraudulently hidden his assets (including valuable real estate in Puerto Rico, New York, Spain and France) in the name of his wife as well as an *alter ego* dummy Panamanian corporation whose owner was found to be a "fictional character." *See Goya Foods, Inc. v. Unanue-Casal*, 982 F. Supp. 103 (D.P.R. 1997), *appeals docketed*, Nos. 98-1553, 98-1554 (1st Cir. 1998).

in Charles Unanue pursuant to 11 U.S.C. § 349(b)(3)." (Certification of Jan Alan Brody dated Dec. 21, 1995, at 2)

On May 19, 1998, after considering lengthy briefs and oral arguments submitted by all parties including Petitioner, the Appellate Division of the New Jersey Superior Court affirmed the trial court's judgment and all the orders appealed from. *Matter of Unanue*, 311 N.J. Super. 589, 710 A.2d 1036 (App. Div. 1998) (Pet. 3a-11a). The appellate court's opinion addressed various state-law inheritance, contract and procedural issues raised by Petitioner in his appellate briefs, while holding all of Petitioner's remaining claims that it had not expressly addressed to be "without merit." (Pet. 10a) On July 16, 1998, the Appellate Division denied Petitioner's motions for reconsideration. (Pet. 12a-13a) On November 2, 1998, the New Jersey Supreme Court denied Petitioner's applications for certification to review the Appellate Division judgment (Pet. 1a-2a), and on February 1, 1999, Petitioner filed this petition for certiorari (together with his unauthorized, duplicative *pro se* submission in No. 98-1250).[8] For the reasons stated below, the requested writ should be denied.

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8. The Petition requests that this Court issue a writ of certiorari addressed to the Supreme Court of New Jersey, but that court's only action in this case was to deny discretionary review, and it never entered any judgment that could be subject to review by this Court. The highest state court that actually rendered a reviewable decision in this case is the New Jersey Superior Court, Appellate Division, and it is to that Court that the writ should be addressed in the highly unlikely event that one were to issue. *See* Robert L. Stern, Eugene Gressman *et al.*, Supreme Court Practice 326 (7th ed. 1993).

REASONS FOR DENYING THE WRIT

I.

THE NEW JERSEY COURTS PROPERLY APPLIED NEW JERSEY STATE LAW TO THE INHERITANCE DISPUTE BEFORE THEM

A. The Statute Cited By Petitioner Does Not Control Prudencio Unanue's Domicile, And Raises No Important Federal Issue

After an extended trial, the New Jersey courts held that Prudencio was domiciled in New Jersey (*see* Pet. 7a, 14a-127a, 222a), with the result that New Jersey law (rather than the Puerto Rico legal concepts invoked by Petitioner) was applied in resolving the conflicting claims to inherit assets from Prudencio's estate and the Trust. As the Appellate Division of New Jersey Superior Court held, "[t]he voluminous record amply supports [the trial judge's] findings on which he based his conclusion that Prudencio's domicile . . . remained in New Jersey." (Pet. 7a) This determination of a decedent's domicile for inheritance purposes, under governing state law, raises no federal question for this Court. *See, e.g.*, *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945) (this Court lacks jurisdiction to review state-court determinations of state-law issues).

In attempting to transform this bitterly fought, but analytically straightforward, inheritance dispute into a federal case, the Petition relies almost exclusively upon a federal statute adopted in 1927, which provides that "[a]ll citizens of the United States who . . . reside in the island [of Puerto Rico] for one year shall be citizens of Puerto Rico." 48 U.S.C. § 733a. Petitioner's argument is that because this statute refers to persons who "*reside* in" Puerto Rico for one year, rather than

those who "are domiciled in" Puerto Rico, Congress must have intended to enact a rule under which Prudencio's mere *physical presence* in Puerto Rico for more than one year as the result of illness transformed him into a "citizen" (and hence domiciliary) of Puerto Rico. (*See* Pet. 14-16) In truth, however, it is readily apparent that this statute must be understood to require one year of *domicile* — not mere "residence" — in Puerto Rico to establish "citizenship" there.

In asking this Court to grant certiorari to construe 48 U.S.C. § 733a and apply it to the unusual facts of this case, Petitioner has failed to identify a single important issue that would warrant this Court's attention. Petitioner does not and cannot allege that the holdings of the courts below — which found his § 733a argument unworthy of serious discussion and rejected it as "of no relevance" (Pet. 90a) and "without merit" (*see* Pet. 10a) — created a conflict of lower-court decisions that could justify certiorari under this Court's Rule 10(b). To the contrary, § 733a has apparently never been the subject of substantive attention in *any* reported federal or state-court case; and while the statute has been addressed in several opinions of the Supreme Court of Puerto Rico, that court has consistently *rejected* interpretations such as Petitioner's, and held that "*citizenship of Puerto Rico is predicated on domicile in Puerto Rico*. Under [§ 733a and other statutes], the 'residence' which makes a person a citizen of Puerto Rico *is equivalent to domicile*." *Buscaglia v. Tax Court*, 68 P.R.R. 322, 325-26 (1948) (emphasis added). *Accord, e.g., Fiddler v. Secretary of the Treasury*, 85 P.R.R. 302, 309 (1962) ("[C]itizenship of Puerto Rico is predicated on domicile in Puerto Rico. *However, in order that this domicile may exist residence in Puerto Rico is required for a period of not less than one year*.") (emphasis in original); *Buscaglia v. Tax Court*, 69 P.R.R. 844, 847 (1949); *Lókpez v. Fernández*, 61 P.R.R. 503, 515 (1943) ("We are only citizens of Puerto Rico in the sense that we are residents of Puerto Rico,

the word resident here meaning domiciled."). Petitioner conspicuously ignores these decisions — which, as he conceded in the court below, are directly contrary to his position — even though they appear to represent the *only* authority construing the statute upon which his entire argument rests.

Nor has any "important question of federal law that . . . should be settled by this Court" (*see* Sup. Ct. R. 10(c)) arisen from a statute that has required no federal judicial attention in the 72 years since its enactment during the Coolidge Administration. Petitioner does not suggest that a ruling on the § 733a issue he raises would ever be likely to affect anyone at all other than himself and the Unanue family members whose inheritance he seeks to usurp, and the Petition certainly fails to explain why certiorari should be granted to address an issue that is unlikely ever to recur in any other case. *See, e.g.*, *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994) (per curiam).

A grant of certiorari on the § 733a issue would be particularly unwarranted because Petitioner's proposed interpretation of the statute is untenable on its face. Petitioner reasons that because § 733a refers to persons who "reside in [Puerto Rico] for one year," Congress must have intended to make Puerto Rico citizenship dependent upon presence alone, without regard to the "objective manifestation of intent to make one's abode in that jurisdiction for an indefinite period of time" (Pet. 15 n.4) that Petitioner admits is ordinarily a *sine qua non* of a change of domicile. (*See* Pet. 14-17) Thus, according to the Petition, Prudencio *involuntarily* became a Puerto Rico domiciliary when he spent more than one year there — notwithstanding the findings below that Prudencio always desired and intended to retain and return to his home in New Jersey and that he remained in Puerto Rico during his final years *solely* because grave illnesses rendered it impracticable for him to travel — and Prudencio thereby lost his long-held

New Jersey domicile and his right to dispose of his assets as he saw fit under that state's laws. (*See supra* at 6 & n.5)[9]

As noted above, the Puerto Rico Supreme Court decisions that are the only authority to have addressed § 733a have categorically rejected any such interpretation. Beyond that, the Petition ignores the fact that while judicial decisions frequently recognize the distinction between "domicile" and mere "residence" that Petitioner adduces (*see* Pet. 15 n.4), in *statutes* the words "reside" or "residence" are used far more often than "domicile," and are most often used to mean domicile. This was certainly the case in 1927, the time when § 733a was enacted, which is of course the "most relevant time for determining a statutory term's meaning." *MCI Telecommunications Corp. v. AT&T Co.*, 512 U.S. 218, 228 (1994). As observed by a leading treatise of that era:

> *The term "residence" . . . is the wording commonly used in statutes.* Indeed the American decisions involving domicile are largely based on statutes where the word "residence" is used. . . . While broad generalizations must be indulged in with caution, it

9. Petitioner concedes, as he must, that "the settled concept of domicile . . . requires the intention to continue residing [in a location] for an indefinite period." (Pet. 14 n.3) This is true in New Jersey (*see* Pet. 31a-34a, 61a-63a (citing cases)) and in every other state, as well as in those federal contexts in which this Court has been called upon to define domicile. *See, e.g.*, *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989); *Williamson v. Osenton*, 232 U.S. 619, 624-25 (1914); *Mitchell v. United States*, 88 U.S. (21 Wall.) 350, 353 (1874). Under this definition, and as the New Jersey courts found, Prudencio's stay in Puerto Rico solely as the result of health problems did not affect his New Jersey domicile. *Cf. State of Texas v. State of Florida*, 306 U.S. 398, 427 (1939) (residence in location for a "special purpose," such as "obedience to the demands of health," does not change domicile).

> seems safe to say that *residence as a statutory term generally means domicile.*

Herbert F. Goodrich, *Handbook on the Conflict of Laws* 26-27 (1st ed. 1927) (emphasis added); *accord, e.g.*, Willis L.M. Reese & Robert S. Green, *That Elusive Word, "Residence"*, 6 Vand. L. Rev. 561 (1953). Indeed, by 1927, it had long been "well settled that residence as used in statutes defining political rights is synonymous with domicile." *Delaware, Lackawanna & W. R.R. Co. v. Petrowsky*, 250 Fed. 554, 560 (2d Cir.), *cert. denied*, 247 U.S. 508 (1918). As § 733a, in identifying the "citizens of Puerto Rico," unquestionably "defin[ed] political rights," the phrase "reside in the island for one year" must be understood to mean "are domiciled in the island for one year" — just as the Supreme Court of Puerto Rico has always understood it — and Petitioner's statutory argument collapses completely.[10]

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10. Thus interpreted (as it has consistently been by the Puerto Rico Supreme Court), § 733a states that "all citizens of the United States who . . . [are domiciled] in the island for one year shall be citizens of Puerto Rico." Read in this fashion, § 733a simply established a one-year *durational residency requirement* for the exercise in Puerto Rico of citizenship rights such as voting. Such requirements were commonly found throughout the country during the 1920's and for many years afterwards, *see Dunn v. Blumstein*, 405 U.S. 330, 333 n.3 (1972) (citing cases from 12 states); K.K. Kennan, *A Treatise on Residence and Domicile* 890-918 (1934) (quoting voter statutes from *every* state), and were universally interpreted to require domicile (and not merely a period of physical presence) in the jurisdiction for the designated period of time. *See, e.g., McGrath v. Kristensen*, 340 U.S. 162, 174 (1950) (noting that in statutes defining voter qualifications, the term "residence" "equals domicile"); *In re McLauchlan*, 1 F.2d 5, 6 (1st Cir. 1924); *United States ex rel. Devenuto v. Curran*, 299 Fed. 206, 211 (2d Cir. 1924); Joseph H. Beale, *Residence and Domicil*, 4 Iowa Law Bull. 3, 5 (1918) ("residence as a qualification for voting means domicil"; citing cases from 12 states); Restatement of Conflict of Laws § 9 cmt. e (1934) ("In statutes relating to . . . voting, residence means domicile unless the contrary is indicated in the statute"). Innumerable other citations could be offered.

Interpreting § 733a as requiring one year of *domicile* (not mere "residence" or presence) in Puerto Rico to establish Puerto Rico citizenship is also strongly supported by this Court's rulings construing Section 1 of the Fourteenth Amendment, which defines *state* citizenship by declaring that "[a]ll persons born or naturalized in the United States . . . are citizens of the United States and of the state wherein they *reside*." (Emphasis added) Although the Amendment defines a state's citizens as all American citizens who "reside" (not "are domiciled") in that state, this Court held without difficulty that state citizenship requires not mere physical presence or "reside[nce]" in the state but also the intent to remain there permanently or indefinitely, *i.e.*, to establish a domicile there. *E.g.*, *Robertson v. Cease*, 97 U.S. 646, 650 (1878) (Harlan, J.); *Steigleder v. McQuesten*, 198 U.S. 141, 143 (1905) (despite Fourteenth Amendment's use of word "reside," "a mere averment of residence in a particular State is not an averment of citizenship in that State"); *see Poulos v. Naas Foods, Inc.*, 959 F.2d 69, 70 n.1 (7th Cir. 1992).

Thus, the interpretation of § 733a implicitly adopted by the courts below gives the statute a plain meaning consistent with the common understanding of the statutory language, represents the only plausible explanation of congressional intent, accords with the only caselaw on point, and produces an entirely just result in this case. By contrast, Petitioner's proposed interpretation of § 733a is unsupported and Petitioner has offered no evidence or reason to believe that Congress adopted it.[11] Significantly, if Petitioner were correct that the

11. Petitioner's reliance on snippets he excerpts from the drafting history of § 733a is entirely misplaced. (*See* Pet. 14-15) Because the plain meaning of § 733a is clear given all the considerations set forth in the text, the statute cannot be considered truly ambiguous so as to require resort to legislative history. In any event, Petitioner's speculation regarding why the words "are permanently domiciled" in a prior draft (Cont'd)

test for Puerto Rico citizenship under § 733a excluded the element of intention, then Congress enacted a test for domicile in Puerto Rico that would differ from the standard applied under federal law and in every state, and that test could preempt the domicile law of every state (and of Puerto Rico itself, *see* 1 L.P.R.A. § 8(7)) in cases like this one. (*See* Pet. 13-16) Petitioner has suggested no reason why Congress should have desired either to create a unique test of domicile for Puerto Rico or to preempt state law with such a definition. *See Elkins v. Moreno*, 435 U.S. 647, 662 n.16 (1978) ("[T]he question of who can become a domiciliary of a State is one in which state governments have the highest interest. Many issues of state law may turn on the definition of 'domicile.' . . ."); *Third Nat'l Bank v. Impac Ltd.*, 432 U.S. 312, 323 (1977) (where a party "completely fails to identify any national or local interests which [his proposed] reading of the statute would serve," that interpretation is unlikely to be correct). Because Petitioner's proposed interpretation of § 733a is manifestly incorrect, and because in any case the issue he raises is of no general importance, the Petition raises no issue worthy of certiorari and should be denied.

(Cont'd)
of the statute were changed to "reside" in the final version ignores the explanation that Congress actually provided. The committee report on the bill that became § 733a indicates that the precise wording of the provision was chosen simply to be "identical with that enacted some years ago for Hawaii" (which was the only other insular territory whose people were American citizens at that time). S. Rep. No. 69-1011 at 2 (June 7, 1926). The drafters' goal of achieving uniformity in parallel statutes governing the different territories cannot possibly bear the weight placed upon it by Petitioner.

B. The New Jersey Courts Properly Applied New Jersey Law To This Controversy Involving New Jersey Assets Of A New Jersey Citizen

Petitioner asserts that "the real determination of consequence in this matter is whether Prudencio [was] a citizen of Puerto Rico," rather than of New Jersey, when he died in 1976. (Pet. 16) Based entirely on his contention that his father was a "citizen of Puerto Rico" under 48 U.S.C. § 733a, Petitioner then asserts that the New Jersey courts violated the Full Faith and Credit Clause of the Constitution (and/or its implementing statute, 28 U.S.C. § 1738), by applying New Jersey state law rather than Puerto Rico law in rejecting Petitioner's inheritance claims. (*See* Pet. 17-23) As shown above, however, Prudencio was a domiciliary and citizen of New Jersey, not of Puerto Rico, and in any event there is no reason for this Court to grant certiorari on that issue.

Because Petitioner cannot overcome the findings below that Prudencio was domiciled in New Jersey, his full faith and credit argument based entirely on the assumption of Prudencio's Puerto Rico citizenship also fails and need not be addressed further. Even apart from this threshold difficulty, this argument is meritless on its face.

It should be noted at the outset that no special analysis, for full faith and credit purposes, is required because Petitioner relies on the law of the Commonwealth of Puerto Rico rather than of a state. Respondents fully agree with Petitioner that Puerto Rico's laws and judicial decisions are entitled to the same recognition, under the Full Faith and Credit Clause and/or under § 1738, as if Puerto Rico were a state of the Union. (*See* Pet. 19-20) This proposition is well established and entirely uncontroversial. On the other hand, there is no merit to or support for Petitioner's suggestion that statutes adopted by the

Puerto Rico Legislature are entitled to "supremacy [as] results of the exercise of federal legislative power" (Pet. 17), which would accord Puerto Rico's legislation *greater* standing than if Puerto Rico were a state. *See Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 499 (1988) (for Supremacy Clause purposes, Puerto Rico laws are treated "the same as . . . the law of a State"). Because these relevant principles are not in genuine dispute, this case involves no novel or significant questions concerning the judicial or political status of Puerto Rico. Rather, Petitioner's invocation of Puerto Rico law is properly analyzed in exactly the same fashion as if Petitioner were attempting to invoke the law of New York or California or any other state.[12]

The Petition asserts that New Jersey was constitutionally required to "give Full Faith and Credit to the Acts of Puerto Rico governing 'family rights and obligations. . . .' " (Pet. 20) Of course, one can imagine circumstances under which New Jersey courts would be called upon to apply the laws of another jurisdiction, such as Puerto Rico, to a case before them. Whether "New Jersey [is] obligated . . . to give effect to the Civil Code of Puerto Rico," as the Petition states the question (Pet. i), cannot be answered in the abstract. Rather, the question presented is whether full faith and credit principles obliged New Jersey to adjudicate *this dispute* under the laws of another jurisdiction rather than give effect to its own laws and public policy. The answer is no.

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12. This case involves issues of full faith and credit allegedly owed only to Puerto Rico's "laws (legislative measures and common law)," and does not involve the far more "exacting" deference that would be owed to a *judgment* of the courts of a sister jurisdiction in related litigation. *See Baker v. General Motors Corp.*, 118 S. Ct. 657, 663-64 (1998) (distinguishing between these two separate applications of the Full Faith and Credit Clause).

This Court has emphasized that "[t]he Full Faith and Credit Clause does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.' " *Baker v. General Motors Corp.*, 118 S. Ct. 657, 663 (1998) (quoting *Pacific Employees Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501 (1939)); *accord Sun Oil Co. v. Wortman*, 486 U.S. 717, 722 (1988); *Nevada v. Hall*, 440 U.S. 410, 421 (1979) ("the Full Faith and Credit Clause does not require a State to apply another State's law in violation of its own legitimate public policy"). Rather, because this Court has emphatically declined to "embark upon the enterprise of constitutionalizing choice-of-law rules," *Sun Oil*, 486 U.S. at 728-29, the Constitution intervenes only in "limited situations," *Nevada v. Hall*, 440 U.S. at 422, to require that to apply its law a forum state must have "a significant contact or significant aggregation of contacts [with a controversy], creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818-19, 821-822 (1985); *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981).

The Petition makes no effort to establish that applying New Jersey law to govern this case violated these limited constitutional criteria for evaluating state-court choice-of-law decisions. None of the controlling cases such as *Allstate Insurance*, *Phillips Petroleum* and *Sun Oil* are cited in the Petition (nor in Petitioner's papers below, which barely, if at all, preserved the constitutional claim he now seeks to present). Petitioner's reticence is understandable, because recasting his constitutional claim in the language of those cases reveals it as simply frivolous.

The New Jersey courts applied New Jersey law in deciding the inheritance dispute in this case after determining that (i)

the decedent, Prudencio, was domiciled in New Jersey at the time of his death and had been a New Jersey domiciliary for the preceding 47 years, (ii) the assets to be distributed were contained in a Trust that was governed by New Jersey law and supervised by a New Jersey court, and (iii) these assets consisted of stock that was located in New Jersey and represented ownership of a corporation headquartered in New Jersey. Under these circumstances, any contention that New Jersey was not "competent to legislate" with regard to this dispute, or that New Jersey lacked a "significant aggregation of contacts" with it, or that the choice of New Jersey law to resolve it was "arbitrary and fundamentally unfair," would be meritless on its face.[13]

Indeed, New Jersey's uncontroverted contacts with this controversy — including the presence within the state of the Goya stock that constituted the Trust assets as well as Goya itself, Prudencio's selection of New Jersey law to govern his estate plan, and the New Jersey residence of several of the Beneficiary Respondents whose inheritance Petitioner seeks to usurp (and whose existence the Petition studiously ignores) —

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13. It should be noted that the choice-of-law rules the New Jersey courts applied in this case are entirely within the mainstream of American conflicts law, and resemble those that are routinely applied by *every* jurisdiction in the United States (including Puerto Rico). For example, with respect to Petitioner's claim to inherit assets from his father, the New Jersey courts applied the "familiar principle . . . that normally it's [the] law of the place where one is domiciled at the time of death [that] governs his will." (Pet. 169a; *see also* Pet. 7a) In the same vein, Petitioner's claim that his mother had a "conjugal partnership" interest in Prudencio's assets, was addressed under the nationally accepted, "well-settled conflicts-of-law principle that the law of the place of the domicile of the acquiring spouse at the time of the acquisition governs the determination of whether the acquired property is separate or community [property]." (Pet. 8a; *see also* Pet. 173a) *Cf.*, *e.g.*, Restatement (Second) of Conflict of Laws §§ 258, 263 (1971).

were sufficiently robust that New Jersey would have been constitutionally authorized to exercise jurisdiction and apply its law to the distribution of Prudencio's property *irrespective* of Prudencio's domicile. *See, e.g.*, *Shaffer v. Heitner*, 433 U.S. 186, 207-08 (1977) (each state has jurisdiction to adjudicate claims to assets located within that state); *Direction der Disconto-Gesellschaft v. United States Steel Corp.*, 267 U.S. 22, 28 (1925) (Holmes, J.) (location of stock within jurisdiction justified application of that jurisdiction's law to determine ownership, because "the question who is the owner of the paper depends upon the law of the place where the paper is"). Hence, even if Prudencio had not been a domiciliary of New Jersey at all relevant times (which he was), Petitioner's full faith and credit argument would still lack merit.[14]

Finally, Petitioner's objection to New Jersey's application of New York law to uphold the 1972 Agreement and 1974 Amendment (Pet. 21-22), is equally without substance. As noted above, those two contracts *expressly provided* that they were to be "construed and governed in accordance with the laws of the State of New York." (*See* Pet. 170a) In and of itself, the contractual agreement of all parties, *including Petitioner*, that the courts would apply New York law to resolve any dispute under the contracts vitiates any claim that it was "arbitrary [or] fundamentally unfair" for the New Jersey courts to do precisely that.

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14. Petitioner's repeated contention that the Appellate Division manifested New Jersey's disregard for full faith and credit principles by observing that New Jersey does not "recognize" community property or conjugal partnerships is also frivolous. (*See* Pet. 11, 13, 20, *citing* Pet. 8a) Read in context, the opinion simply states that *New Jersey's internal law* does not include these concepts. This indisputably true statement cannot reasonably be read to suggest that New Jersey ignores its full faith and credit obligations or would not apply foreign law if genuinely called upon to do so. New Jersey has a well-developed body of conflict-of-laws jurisprudence demonstrating precisely the opposite.

Because Petitioner's full faith and credit arguments are facially meritless, ignore this Court's precedents, and raise no issue likely to recur, they do not warrant certiorari.

II.

PETITIONER'S DUE PROCESS CLAIM IS MERITLESS

Point II of the Petition presents a highly factbound argument that Petitioner's Fourteenth Amendment due process rights were violated because the New Jersey courts supposedly "undertook to enter a judgment declaring that [Petitioner] was not entitled to any inheritance from [his mother] Carolina's estate" (Pet. 24), although that claim supposedly was not before the New Jersey courts. (*See* Pet. 23-27) In essence, Petitioner asks whether the wording of the pleadings and other documents filed in the New Jersey action, over the course of eleven years of complicated litigation, was sufficiently clear to place Petitioner on notice that the issues before the court included his own contention that Prudencio's property was owned by a "conjugal partnership" created under Puerto Rico law (*i.e.*, that Prudencio's wife Carolina was entitled to 50% ownership of the assets upon his death).

To adjudicate this due process claim, the Court would be called upon to parse all the pleadings, motion papers, briefs, and court orders filed in years of litigation before the New Jersey courts, so as to determine whether Petitioner was on adequate notice that a particular issue was to be adjudicated. This endeavor, which would create no broader precedent at all, is not an appropriate role for this Court, and does not warrant certiorari. *See* Sup. Ct. R. 10; *Rudolph v. United States*, 370 U.S. 269, 270 (1962) (per curiam) (Supreme Court does not review matters whose resolution "would be of no importance

save to the litigants themselves"). Moreover, Petitioner's argument that his due-process rights were somehow violated by alleged pleading or notice deficiencies is, regrettably, based upon repeated distortions of the proceedings in the courts below, and is entirely refuted by an accurate recitation of the relevant procedural history.

Respondents commenced the New Jersey action in 1987, for the purpose of obtaining the complete resolution of the controversy created when Petitioner belatedly demanded an inheritance from Prudencio, who had died more than 11 years earlier. To that end, the Complaint sought a declaratory judgment that Petitioner was barred from "asserting *any claims whatsoever* against the estate or property of Prudencio Unanue or the Trusts established by Prudencio Unanue." (Complaint at 18; emphasis added) This request was intended to be, and was, broad enough to result in a judgment conclusive with respect to *any claim* that Petitioner was entitled to inherit or receive Trust assets.

On December 7, 1987, after extensive briefing and argument on jurisdictional issues by all parties including Petitioner, the New Jersey trial court entered an order (which Petitioner does not challenge) holding that it had jurisdiction over the subject-matter of the controversy and over all persons (including Petitioner) who might assert claims to assets of either Prudencio's estate or the Trust. Among other issues, the New Jersey court asserted its jurisdiction over "all claims or issues respecting the applicable law which shall govern the said Estate or the said Trust (whether the law of New Jersey or Puerto Rico or any other jurisdiction)." (*See infra* at 2a)

Thereafter, Petitioner filed Counterclaims (December 1987) and an Amended Counterclaim (July 1988) in the New Jersey action, which explicitly asserted, *inter alia*, that

Petitioner was entitled to share in the Trust assets, even though Prudencio had bequeathed him nothing. One of Petitioner's theories was that the Goya stock in Prudencio's name was actually owned by a "conjugal partnership" between Prudencio and Prudencio's wife Carolina, pursuant to supposedly applicable Puerto Rico law, so that Carolina held a 50% interest in these assets.[15] In its December 1991 domicile opinion, the New Jersey trial court noted that this claim by Petitioner was pending, but did not yet resolve it. (*See* Pet. 16a & n.1) The United States District Court in Puerto Rico, in its August 1993 opinion lifting the automatic stay of the New Jersey action, similarly noted that this issue was pending and awaiting resolution in New Jersey. *See Unanue-Casal v. Unanue-Casal*, 159 B.R. at 93. Contrary to his present contention, Petitioner could not have been surprised when this precise issue was ultimately the subject of a motion before, and ruling by, the New Jersey court.

On October 15, 1993, pursuant to a schedule the New Jersey court had fixed at a status conference the previous month, Respondents moved for summary judgment on all issues remaining in the New Jersey action. The motion sought relief consonant with the relief Respondents had demanded in their Complaint filed six years before, including "a declaratory judgment that Charles Unanue has no rights to receive any assets from . . . the *inter vivos* trust created on November 16, 1970." (Notice of Motion dated Oct. 15, 1993, at ¶ 2) Respondents' summary judgment motion was accompanied by a brief which, *inter alia*, addressed Petitioner's claim that he was entitled to Trust assets based on his "conjugal partnership" theory, thus placing Petitioner fully on notice that this issue was before the New Jersey court. Indeed, Petitioner discussed this issue at

15. Petitioner asserted this claim although Carolina, who survived Prudencio by more than eight years before dying in 1984, had never made such a claim, and in fact had signed a *release* of Prudencio's estate broad enough to encompass any such claim. (*See* Pet. 169a-170a)

length in his brief in opposition to summary judgment, as well as at a lengthy oral argument held on November 19, 1993. (*See* Pet. 143a-164a) His arguments were duly considered by the trial court, but rejected on their merits. (Pet. 166a-175a) Petitioner had a further opportunity to present his contentions to the Appellate Division, which, after full briefing and argument, again disagreed with Petitioner's contentions and affirmed the judgment for Respondents. (Pet. 6a)[16]

Under these circumstances, Petitioner's due process claim is entirely without substance. At all stages of the proceedings, throughout the litigation and particularly when presented with Respondents' summary judgment motion, Petitioner knew precisely what issues were before the New Jersey courts and he knew, well in advance, when he would have an opportunity to address them. Petitioner's reliance on *Fuentes v. Shevin*, 407 U.S. 67 (1972) (Pet. 24), which invalidated replevin statutes that authorized *ex parte* seizures of property without notice, hearings, or judicial proceedings of any kind (*see id.* at 73-78), is wholly misplaced in this case where Petitioner received in ample measure the notice and opportunity to be heard "at a meaningful time" that are the hallmarks of due process of law.

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16. Petitioner repeatedly mischaracterizes the determination that Respondents sought and obtained from the New Jersey courts as a declaration "that Charles was not entitled to any inheritance from Carolina's estate." (Pet. 24; *see also* Pet. i, 3, 10-11, 23) In repeatedly making this claim, Petitioner never cites the opinions below or any other documents from New Jersey litigation to support his contention that the New Jersey courts adjudicated Petitioner's right to inherit from "Carolina's estate." Rather, the New Jersey courts determined who was entitled to the assets that *Prudencio* had placed in the Trust, necessarily and in the process confirming that Prudencio had been the sole owner of the property (and that Carolina or a "conjugal partnership" had not). Thus, the Goya stock held by Prudencio never became part of "Carolina's estate," and Petitioner's assertions about his alleged right to inherit from that estate are irrelevant.

See id. at 80-87. "Due process" (and then some) was assuredly accorded to all parties during the *eleven years* this family dispute was before the New Jersey courts, and the record certainly does not reflect any systematic error calculated to recur in other cases unless reviewed and corrected by this Court.[17] Certiorari should, therefore, be denied.

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17. Petitioner's remaining arguments that the state court erred in granting summary judgment on state-law claims, and thereby denied him due process, are frivolous candidates for this Court's review. (*See* Pet. 24-25) Petitioner's unsupported suggestions that additional discovery should have been allowed, and there was insufficient "competent evidentiary proof" to warrant summary judgment, do not raise federal issues, and Petitioner offers no authority to suggest that they do.

CONCLUSION

For all the reasons stated above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, BERGEN COUNTY, PROBATE PART, DATED DECEMBER 7, 1997 CONFIRMING ITS JURISDICTION OVER ALL DISPUTES CONCERNING PRUDENCIO UNANUE'S ESTATE AND TRUST-

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY
PROBATE PART

DOCKET NO. [M-128817]

In the Matter of the Settlement of the Accounts of JOSEPH UNANUE and FRANK UNANUE, Trustees Under the Trust Agreement dated November 16, 1970, as amended, by and among PRUDENCIO UNANUE, as Grantor, and PRUDENCIO UNANUE, JOSEPH UNANUE and ANTHONY UNANUE, as Trustees of Sixteen Trusts thereunder.

ORDER

This matter being opened to the court upon the application of Crummy, Del Deo, Dolan, Griffinger & Vecchione, a Professional Corporation, attorneys for certain beneficiaries, and the court having considered the arguments of counsel, the papers submitted in support of and in opposition to said motion, and having further considered all pleadings on file in this matter, and the court having found (1) that it has, and has had, exclusive and continuing subject matter jurisdiction over the Estate and Trust of Prudencio Unanue and all matters concerning or pertaining thereto, including any and all claims to any interest in the res of said Trust; and (2) that in order to protect and maintain jurisdiction, the court must preserve the res within the State of New Jersey, and further, resolve all disputes

concerning said Trust and Estate by whomever raised; and for good cause shown; and for the reasons set out in the court's oral opinion delivered this day in open court,

IT IS, on this 7th day of December, 1987,

ORDERED, that this court hereby finds that it has subject matter jurisdiction over both the Trust and the Estate, and consistent therewith it also has personal jurisdiction over all parties claiming any interest in either the Trust or the Estate, including Charles Unanue, for the purpose of determining the interest of any such person in the said Trust or the said Estate; and it is further

ORDERED, this court finds that any and all claims or issues respecting the domicile of Prudencio Unanue at or prior to his death, and any and all claims or issues respecting the applicable law which shall govern the said Estate or the said Trust (whether the law of New Jersey or Puerto Rico or any other jurisdiction) should be tried and argued in this Court and this court is found to be the appropriate tribunal in which such issues shall be tried and argued and resolved; and it is further

ORDERED, that unless and until this court determines that the Estate or the Trust should be administered in some other jurisdiction, this court shall administer and retain exclusive jurisdiction over the Estate and the Trust and any accountings, distributions or claims with respect thereto; and it is further

ORDERED, that until final resolution of this proceeding, or further order of the court, the Trustees of the said Trust are restrained and enjoined from removing the Trust Res or any of the assets of the Trust from the jurisdiction of the State of New Jersey.

[signed]
Arthur J. Lesemann, J.S.C.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DATED NOVEMBER 16, 1993 DENYING PETITIONER'S MOTION FOR A STAY OF NEW JERSEY PROCEEDINGS PENDING APPEAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 93-2186

JOSEPH A. UNANUE, *et al.*,

Appellees,

v.

ULPIANO UNANUE-CASAL a/k/a CHARLES UNANUE,

Appellant.

Before Breyer, *Chief Judge*,
Selya and Cyr, *Circuit Judges*.

ORDER OF COURT

Entered November 16, 1993

Movant-appellant Ulpiano Unanue-Casal moves for a stay pending appeal, pursuant to Fed. R. App. P. 8, of the district court order lifting the stay on proceedings in the New Jersey Superior Court. We deny the motion.

First, for the reasons stated by the district court in its opinion dated August 3, 1993, movant has not established a

sufficient likelihood of success on the merits. Movant's contention that the district court erred in not remanding the case to the bankruptcy court after it had found that appellees had met their *prima facie* burden of proof is not convincing. Before making its decision concerning the lifting of the stay in the New Jersey action, the bankruptcy court had already decided that the only evidence that the movant proffered at the bankruptcy hearing was irrelevant. Since all relevant evidence was before both the bankruptcy and the district courts, a remand would serve no useful purpose. We also note that the record strongly suggests that the movant has been manipulating the bankruptcy process to avoid determination of the merits of the underlying dispute. *Cf. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 814 F.2d 844, 847 (1st Cir. 1987) (affirming decision granting relief from automatic stay without any testimonial hearing on ground that debtor was misusing bankruptcy protection to avoid decision on merits of dispute).

Second, movant has failed to establish that he would suffer any irreparable harm if the stay is not granted. Denial of the stay would only allow the New Jersey action to proceed.[1] Movant has a right to participate in that action and to avail himself of the state appellate process should he so choose. Being required to litigate in state court rather than bankruptcy court does not constitute irreparable harm. *In re Thomases*, 28 B.R. 961, 962-63 (Bankr. S.D.N.Y. 1983). Nor is the fact that movant's appeal in this court may be mooted by the New Jersey action a basis for a stay without a showing that a stay is otherwise appropriate. *See Ramsdell v. G.H. Coffey Co.*, 632

1. Movant's contention that his interests will not be represented in the New Jersey action because the bankruptcy trustee is unwilling or unable to appear is without merit. The New Jersey court has indicated that it would permit movant to appear on his own behalf. As the district court wrote, and as the record amply supports, movant "has demonstrated no problems hiring numerous lawyers and law firms for all his suits."

F.2d 162 (1st Cir. 1980) (denying stay pending appeal, even though case may become moot, since there was no other showing of entitlement to extraordinary relief). Movant has made no such showing here.

Movant's request for oral argument is denied. Movant's request for a stay pending appeal is *denied*.

By the Court:

[signed]
Clerk

OPINION AND ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO DATED SEPTEMBER 12, 1995 DISMISSING PETITIONER'S CHAPTER 7 BANKRUPTCY CASE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

CASE NO. 90-04490 (SEK)

Chapter 7

IN THE MATTER OF:

ULPIANO UNANUE-CASAL a/k/a
CHARLES UNANUE,

DEBTOR

OPINION AND ORDER

We must decide whether to grant the Trustee's request for a dismissal of this case opposed by the Debtor.

A review of the events which lead to the Trustee's request shows the following. The controversies pending in this case were consolidated and litigated under adversary proceeding number 91-0099. In this adversary proceeding we bifurcated the issues, denied Plaintiffs' motions for abstention and scheduled the bifurcated issue for trial commencing on May 17, 1994. In the meantime, on December 15, 1993, the U.S. District Court for the District of Puerto Rico vacated our Opinion and Order bifurcating the issues and ordered us to

abstain from ruling, as the matter was best left to the State Courts. We then vacated the trial date, scheduling instead a status conference. Debtor requested the continuance of the status conference. Hence, the status conference was held on November 16, 1994, together with a hearing to consider Debtor's request for the removal of the Trustee and the various responses thereto. We ordered the U.S. Trustee to respond to Debtor's request for removal of the Chapter 7 Trustee in writing, within ten days. We ordered the Chapter 7 Trustee to review the entire case in light of several opinions entered by the U.S. District Court for the District of Puerto Rico, upheld on appeal by the Court of Appeals for the First Circuit, and in view of the decisions entered and pending before the Superior Court of New Jersey. We stayed all matters in the Bankruptcy Court awaiting the Trustee's report and recommendation. We denied Debtor's request for the removal of the Trustee as per Opinion and Ordered entered on February 7, 1995. We noted the Trustee had not filed the report and ordered him to do so within ten days. He filed the report on February 23, 1995. The Report asks us to dismiss this case for a number of reasons discussed in the document. As per footnote order entered on the Report, we granted all parties in interest, including the Debtor, twenty days to respond and request a hearing by stating, "unless an objection is filed within twenty days, this case is dismissed." On March 15th Debtor objected to the dismissal of the case and petitioned the Court for entry of his discharge. On March 31st the U.S. Trustee filed his statement regarding the Chapter 7 Trustee's Report. The Trustee asked for and was granted two extensions of time to respond to the Debtor's position. On April 25, 1995 he filed his reply. The response to this reply was filed by the Debtor on May 8, 1995, when the issue was submitted for adjudication.

11 U.S.C. § 707(a) provides:

> "(a) The court may dismiss a case under this chapter only after notice and hearing and only for cause, including —
>
> (1) unreasonable delay by the debtor that is prejudicial to creditors; [or]
>
> (2) nonpayment of any fees [or] and charges required under chapter 123 of title 28 [28 USC §§ 1911 *et seq.*]; and
>
> (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee."

This section sets forth three examples of "cause" which would justify the dismissal of a Chapter 7 case. However, "These examples are merely illustrative and the court may dismiss the case on other grounds when cause is found to exist."[1] Courts have found cause for dismissal based on a variety of grounds discussed in the cited section of *Colliers*. These grounds include some alluded to in the Trustee's Report: i.e., "Where judicial economy would be furthered with no substantial detriment to the debtor or the creditors, the Chapter 7 case may be dismissed. Also, a case may be dismissed if it was not filed in good faith.

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1. 4 *Collier on Bankruptcy*, Section 707.03 (15th ed.).

Bad faith may be found when the debtor has a frivolous, noneconomic motive for filing a bankruptcy petition, when there is a sinister or unworthy purpose, or when there is abuse of the judicial process."[2]

We read and considered the positions of the Chapter 7 Trustee and of the Debtor. We find there is no need for an evidentiary hearing to establish facts to support our conclusion. Facts material to the Trustee's request for dismissal are contained in his Report. We adopt these facts as our own because they are not in controversy and are amply supported by the record of this case.[3]

These facts show the Trustee has met his burden of showing there is sufficient cause to grant his request for the dismissal of this case pursuant to 11 U.S.C. § 707(a). Cause for this dismissal is enunciated by the Trustee in his Report which we again adopt as our own reasons for granting the dismissal of this case.

Lastly, we note the United States District Court for the District of Puerto Rico has repeatedly stated this case is but "another chapter in the epic struggle of the alleged debtor to escape the consequences of his prior actions and decisions. In a related action involving the same parties, *In Re Unanue-Casal*, 159 B.R. 90 (D.P.R. Aug. 3, 1993), we decided in favor of the

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2. *Ibid.*

3. For example, the Trustee states there is no cash to pay for continuing expensive litigation; there are no Claimants other than those involved in the family dispute amply documented in our opinions and those of the U.S. District court cited above; there are no assets which can be converted to cash as per Debtor's own disclosure and the Trustee's Report; the family dispute is still pending before the State Courts of New Jersey and Puerto Rico because opinions entered are not final or unappealable.

appellants above. We do so again, because we remain convinced that debtor's bankruptcy petition is a ruse designed to frustrate the legitimate rights of his adversaries."[4]

WHEREFORE, the Trustee's motion to dismiss this case is granted. We retain jurisdiction to dispose of the funds deposited with the Clerk. The Chapter 7 Trustee is discharged and his bond is cancelled.

The Clerk is ordered to enter a judgment accordingly in the docket of the case and of adversary proceeding 91-0099, vacate any hearing dates, and close both the case and the adversary proceeding forthwith.

GIVEN, in San Juan, P.R., this 12th day of September, 1995.

[signed]
SARA DE JESÚS
U.S. BANKRUPTCY JUDGE

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4. *In re Unanue-Casal*, 164 B.R. 216, 217 (D.C.P.R. 1993), *aff'd*, 32 F.3d 561 (C.A. 1st Cir. 1994); *cert. denied*, 115 S.Ct. 1098 (1995). The U.S. District court for the district of Puerto Rico in another published opinion stated:

"[I]t appears to be common knowledge that the Debtor is not bankrupt. Yet, the Debtor's true financial worth has remained a mysteriously shrouded fact. Therefore, any interference with the Bankruptcy proceeding by lifting the automatic stay would be irrelevant because the Debtor does not need the protection of the bankruptcy court. . . .

"There is also evidence that the Debtor's petition for bankruptcy is a sham, because he is not 'financially distressed.' . . . We are convinced the Debtor acted in bad faith when he filed for bankruptcy." *In re Unanue-Casal*, 159 B.R. 90, 99, 102 (D.P.R. 1993), *aff'd mem.*, 23 F.3d 395 (1st Cir. 1994).